

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matters of

Yusef Nazemi
5347 Pooks Hill Road
Bethesda, MD 20814

Complainants

v.

Bethesda Overlook Townhouse Condominium
c/o Craig F. Wilson
Vanguard Management Associates, Inc.
P.O. Box 39
Germantown, MD 20875

Respondents

and

Bethesda Overlook Townhouse Condominium

Complainants

v.

Yusef Nazemi & Sedigheh Bahramian

Respondents

Case # 501- O

Case # 519-G

DECISION AND ORDER

The above-captioned cases having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on November 14, 2001 pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the duly appointed Hearing Panel having considered the testimony and evidence of record, finds, determines, and orders as follows:

Background

Yusef Nazemi filed complaint # 501-O against Bethesda Overlook Townhouse Condominium with the Commission on November 17, 2000. He objected to the Condominium having taken pictures of his property without permission, their directives to him regarding storage of certain belongings on his rear patio, and the Condominium's monitoring of the property in general, which he characterized as reducing his privacy. He asked the Commission to direct the staff of the Condominium to stop its surveillance and picture taking, and to be permitted to keep certain property on the rear patio.

Subsequently, Bethesda Overlook Townhouse Condominium filed complaint #519-G with the Commission on March 5, 2001 against Yusef Nazemi and his wife, Sedigheh Bahramian. The Condominium complained that Mr. Nazemi and Ms. Bahramian had stored exercise equipment on the limited common area patio in violation of the By-Laws, and the Rules & Regulations of the Condominium. They requested that Mr. Nazemi and Ms. Bahramian be required to remove the equipment from the patio, that it be stored inside, and that the fines that had been levied for the violations be paid.

These complaints were not resolved through mediation, and the disputes were presented to the Commission on Common Ownership Communities, which voted that the disputes involved matters within the Commission's jurisdiction, and were scheduled for hearing. The complaints were consolidated by the Commission for efficiency in their resolution, as they involve the same issues and facts, viewed from two different perspectives.

Mr. Nazemi and Mr. Wilson appeared at the hearing and testified. Ms. Bahramian was summonsed but did not appear, and the parties waived objections to her failure to appear.

The panel heard Mr. Nazemi testify that he enjoyed using a punching bag on the patio and that his children played with portable basketball hoops on the patio. He explained his belief that his basic right of ownership and enjoyment of the property included his right to store the equipment on the patio and use it as he and his children had. Mr. Nazemi testified that he had been a tenant at the property before buying it, and did not receive or understand the Condominium covenants. He testified that he had been cited by the Condominium for storing the equipment on the patio and had attended a hearing on the violation conducted by the Condominium. He also explained that a neighbor had complained about his family creating too much noise at the property. Mr. Nazemi testified that persons whom he thought were either employees of the Condominium or officers of the Condominium had come to the property numerous times and taken photographs of the property. He introduced several pictures (Complainants' Exhibits #1A-#1H) which he said indicated poor maintenance of landscaping by the Condominium.

Mr. Wilson testified that the By-Laws of the Condominium and the rules published in the Bethesda Overlook Townhouses Condominium Owner and Resident

Handbook (the "Handbook") prohibit Mr. Nazemi's punching bag and basketball hoops from being stored on the patio. He introduced several photographs of the equipment and specifically identified three items that the Association requested to be removed: an adult portable basketball hoop, a child's basketball hoop, and a punching bag supported on a free standing frame. He introduced the Condominium's Declaration, By-Laws, the handbook noted above, the Condominium's records of the violations at 5347 Pooks Hill Road, and the Condominium's order to remove the equipment and pay a fine of \$100.

Findings of Fact

1. 5347 Pooks Hill Road is property that is subject to the provisions of the Declaration of the Bethesda Overlook Townhouse Condominium.
2. Article V.8(i) of the Condominium's By-Laws provides that:
 - (i) A Unit Owner shall not place or cause to be placed in the public walkways, driveways, parking areas or other Common Elements any bicycles, furniture, packages or objects of any kind. The public walkways and driveways shall be used for no purpose other than for normal transit through them.
3. The Handbook, under the heading "Grounds" at page 7 specifies with regard to storage, as follows:

Storage (Class A) -- There are no exterior storage areas. You may keep your patio furniture and grills on your patio; however, the rear of your unit, including any trash/air-conditioning area, is not a storage area for tools, seldom-used items, or castoffs. Furthermore, no bicycles, furniture, packages, or other objects may be placed on sidewalks or other common elements. *See* By-laws, page CB-21 item 8(i).
4. At the times relevant to this dispute, an adult basketball hoop, a child's basketball hoop, and a punching bag were stored on the rear patio of 5347 Pooks Hill Road.
5. The Handbook sets forth the procedures in the community for addressing violations of the covenants and the rules in the handbook.
6. Staff or officers of the Condominium visited the property numerous times to take photographs.

Conclusions of Law

Mr. Nazemi's complaint about the frequency of staff visiting his property is understandable, but the Panel concludes that Mr. Nazemi has raised an issue that is not within the Commission's jurisdiction as set forth in Section 10B-8(3) of the Montgomery

County Code, 1994 as amended. The Panel notes that taking pictures of Condominium Common Elements is part of enforcing the covenants, and within the powers of the Condominium. Although offensive to Mr. Nazemi, the activity did not rise to the level of a trespass. Accordingly, the Panel declines to take any action regarding the Condominium's picture taking, other than to comment that while it accepts the need to document conditions as part of the enforcement process, an extreme departure from ordinary and reasonable documentation could certainly create an impression of harassment among property owners.

The Panel concludes that the patio of 5347 Pooks Hill Road is a limited common element as defined in the Declaration. As such it is subject to the storage restrictions set forth in the By-Laws noted above. The Panel finds that the rules developed in the Handbook are reasonable interpretations of the storage provisions of the By-Laws, and that the intent of these provisions is to encourage use of patios for activities such as outdoor cooking and socializing, and to discourage use of the patio space for storage. The Panel concludes that the punching bag and basketball hoops are within the class of items that the By-laws and the Handbook prohibit from being stored on patios.

The Panel concludes that the Condominium followed the procedures it has established for addressing violations of the covenants and rules and that its order to remove the items identified in the Notice of Hearing Results dated September 15, 2000 and establish the \$100 fine was a valid exercise of the Condominium's authority. In light of Mr. Nazemi's sincerely held beliefs and his acknowledged misunderstanding of the covenants, the Panel offers the suggestion that the Condominium consider waiving , reducing, or returning the fine if Mr. Nazemi promptly and permanently removes the punching bag and basketball hoops.

ORDER

Based upon the evidence of record and for the reasons set forth above, it is this 14th day of February, 2002 by the Commission on Common Ownership Communities, ORDERED that:

1. The relief requested by Mr. Nazemi in his complaint #501-O is denied.
2. The relief requested by Bethesda Overlook Townhouse Condominium in its complaint #519-G is granted.
3. Mr. Nazemi must comply with this order within 30 days after the date of its issuance.

Panel members Bruce, Hitchens, and Skobel adopted this decision unanimously.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.


Christopher Hitchens
Panel Chair
Commission on Common
Ownership Communities